

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**PEDRO PALMA, Individually
and on Behalf of all Others
Similarly Situated**

PLAINTIFF

v.

No. 3:18-cv-208-DPM

**WEST MEMPHIS FENCE &
CONSTRUCTION, INC.**

DEFENDANT

ORDER

Palma's opposed motion to voluntarily dismiss his case without prejudice, *No. 39*, is granted. His lawyers say that Palma is "unwilling" or "unable" or both to pursue the case. *No. 39 at 1*. No counterclaim exists. West Memphis Fence laments the lack of specifics, says it has incurred attorney's fees during the year or so the case has been pending, and seeks a with-prejudice dismissal or forced cooperation from Palma: complete discovery to set up a merits disposition. This last possibility is unrealistic in the circumstances. A client's uncooperativeness puts counsel in a bind, which is what the Court sees here. No more details are necessary. While we have all done some work on the premature motion for conditional certification and the discovery disputes, if Palma refiles, West Memphis Fence will have a running start. No sunk Rule 54(d) costs are requested. Plus, while the nonsuit will save Palma's full state claim, any refiled federal claim will

be limited by FLSA's statute of limitations. ARK. CODE ANN. § 16-56-126(a)(1); 29 U.S.C. § 255(a). All material things considered, *Paulucci v. City of Duluth*, 826 F.2d 780, 783 (8th Cir. 1987), dismissal without prejudice is warranted.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

19 February 2020